

ELECTRONICALLY FILED
2022 Jan 18 AM 11:52
CLERK OF THE SHAWNEE COUNTY DISTRICT COURT
CASE NUMBER: 2020-CV-000635



Court: Shawnee County District Court
Case Number: 2020-CV-000635
Case Title: Francis R Everett vs. State of Kansas
Type: MEMORANDUM DECISION AND ORDER

SO ORDERED.

A handwritten signature in black ink, appearing to read "T. Watson", is written over a large, loopy initial "W".

/s/ Honorable Teresa L Watson, District Court Judge

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION THREE**

IN THE MATTER OF THE
WRONGFUL CONVICTION OF
FRANCIS R. EVERETT

2020-CV-635

MEMORANDUM DECISION AND ORDER

Francis R. Everett brings this claim for damages against the State of Kansas pursuant to K.S.A. 60-5004, alleging he was wrongfully convicted and imprisoned for more than five years. The matter was tried to the court as required by statute. See K.S.A. 60-5004(d)(5). The court took the matter under advisement and is now ready to rule.

FINDINGS OF FACT

On November 2, 2007, Everett was convicted of one count of manufacture of methamphetamine in violation of K.S.A. 65-4159(a), a felony crime.¹ Everett was incarcerated on February 7, 2008, for that conviction. Everett's conviction was later reversed. See *State v. Everett*, 296 Kan. 1039, 297 P.3d 292 (2013). Everett's conviction was reversed because the trial court erred in admitting evidence of a prior conviction, and the error was not harmless under the circumstances. Everett's conviction was not reversed because of actual innocence. See *Id.* at 1050.

¹K.S.A. 65-4159 has since been repealed and replaced by K.S.A. 21-5703.

Tearesa Holmes Valentine was a witness in Everett's underlying criminal proceeding, both at the preliminary hearing and the jury trial. She testified in person at the instant trial. Valentine said that in the past she has used methamphetamine hundreds of times and estimated that she had made meth 50 to 100 times. Valentine said she had sold meth to others hundreds of times and had sold it to Everett.

Valentine testified that Everett came to her house sometime between March and May of 2006 and asked if she'd like to "whip up a batch" of methamphetamine. Valentine testified that Everett brought Sudafed pills with him, which are used in making meth. Valentine went to a pharmacy in Red Cloud, Nebraska, and bought more Sudafed pills. Valentine returned to her house and ground up the pills in a coffee grinder. Valentine gathered other materials around her house that were needed to make meth. Valentine testified that Everett, in addition to the Sudafed pills, brought Coleman camping fuel, which is also used to make meth.

Everett drove Valentine in his car out into the country. Everett stopped at a cattle feeder and retrieved a tank of anhydrous ammonia. Anhydrous ammonia is also used to make meth. Everett and Valentine then drove to another field that had a depression, or valley, in the middle of it. Passing vehicles could not see them while they were in the valley. Everett and Valentine mixed up the ingredients to make meth down in the valley. Everett and Valentine were in the field approximately 30 to 45 minutes.

Everett and Valentine went back to Valentine's house to finish the manufacturing process. After making the meth, they used a portion of the meth. Valentine said she smoked some, while Everett smoked some, then injected meth into his arm. Valentine testified she had sold meth to

Everett approximately 10 times. Valentine further testified that she made meth with Everett a total of two times.

In late 2006 or early 2007, a fire occurred in Valentine's house that was caused by making meth. Valentine was jailed on various charges arising from the fire, including aggravated arson and drug crimes. If convicted of the crimes, her sentence could have amounted to 12 or more years in prison. Valentine had a 12-year-old daughter at home. Pursuant to a grant of transactional immunity from the county attorney, Valentine promised to testify truthfully at Everett's 2007 criminal trial about her meth-making activities with Everett. The charges against Valentine were dropped.

Pursuant to the grant of immunity, Valentine also agreed to testify truthfully at other trials if requested by the county attorney. Valentine testified at another trial regarding making meth with another individual in an unrelated occurrence. Also pursuant to the grant of immunity, Valentine agreed not to "use, possess, consume, sell or distribute meth." Valentine testified that she stopped using meth when she was arrested after the fire. Valentine testified she has not made, sold, or used meth for more than 16 years. Valentine has since relocated to Lincoln, Nebraska, and is now a general manager for one of a small chain of grocery stores.

Everett appeared at trial by Zoom. Everett testified that he had never made meth with Valentine or anyone else at any time. Everett admitted he had been to Valentine's house. He said he had given her rides to the grocery store. He admitted that he had purchased meth from her. Everett admitted he had been present on occasions when meth had been made. Everett admitted that he had acted as a lookout when meth had been made by Kevin Scheuerman. Valentine corroborated Everett's testimony by testifying she had been present when Everett had acted as a

lookout when meth had been made. Everett admitted that he had seen portions of the process of how meth was made by Scheuerman.

Everett testified that he knew Sudafed pills are used in making meth. Everett testified that he knew anhydrous ammonia is used in making meth. Everett admitted he had supplied anhydrous ammonia to Scheuerman to make meth. Everett testified that he had supplied the anhydrous ammonia to Scheuerman around the time “you all are talking about,” between March and May 2006. Everett admitted he owned Coleman camping fuel during that time frame. Everett testified that he owned a digital scale during that time frame, and he had weighed meth using the digital scale.

Everett further testified that he did not use meth with Valentine at any time between March and May of 2006. Everett testified he did not test positive for meth when he was drug tested while on community corrections during the same time frame. Everett testified that between March and May of 2006, he worked regular hours for North Central Air in Downs, Kansas, where he made air compressors. Everett introduced evidence that he worked 40-hour weeks from March to May 2006. He testified that Downs was 40 miles from his home, and he usually stayed at a hotel in Downs on Monday through Saturday while he worked.

Everett introduced his North Central Air pay stubs into evidence to support his claim that he did not use meth during the time period in question because he had worked regular, full-time hours. However, Everett admitted he used meth whenever he wanted to throughout his adult life. Everett admitted that he used meth to stay awake so he could do whatever he was doing. Everett also testified that he “always had a job whether I was using or not.” Everett admitted he had

operated a motor vehicle, “might’ve” run a combine during wheat harvest, and “probably” drove a county road grader on gravel roads, all while on meth.

Everett was asked whether he used meth while working at North Central Air. Everett provided various responses. At first, Everett testified he “dabbled a little” with meth during that time. Then he said he was “clean” while he worked there. Everett then admitted that he used meth “once in a while” while working at North Central Air. Finally, Everett was directly asked if he used meth between March and May of 2006. Everett’s response was: “I probably did.”

Everett testified that his method of using meth was injecting it into his arm, and occasionally he swallowed it. He said he did not smoke it because he had bad lungs.

Valentine and Everett were the only witnesses who testified at trial.

CONCLUSIONS OF LAW

K.S.A. 60-5004 is a civil action created by the legislature for persons who were wrongfully convicted and imprisoned. It provides money damages and certain other benefits to a person who proves all the elements of the claim as set forth in the statute. K.S.A. 60-5004(c) says in part:

“(1) The claimant shall establish the following by a preponderance of evidence:

(A) The claimant was convicted of a felony crime and subsequently imprisoned;

(B) the claimant's judgment of conviction was reversed or vacated and either the charges were dismissed or on retrial the claimant was found to be not guilty;

(C) the claimant did not commit the crime or crimes for which the claimant was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges or finding of not guilty on retrial; and

(D) the claimant did not commit or suborn perjury, fabricate evidence, or by the claimant's own conduct cause or bring about the conviction. Neither a confession nor admission later found to be false or a guilty plea shall constitute committing or suborning perjury, fabricating evidence or causing or bringing about the conviction under this subsection.”

The parties do not dispute that Everett has established the following elements of his claim: Everett was convicted of a felony crime; he was imprisoned as a result of his conviction; his conviction was reversed; his charges were dismissed; he did not commit or suborn perjury to bring about his conviction; and he did not fabricate evidence to bring about his conviction. Thus, in this case, Everett must prove by a preponderance of the evidence that: 1) he did not commit the crime or crimes for which he was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction; and 2) his own conduct did not cause or bring about the conviction. Failure to prove either one of these elements is fatal to his claim.

Preponderance of the evidence means “evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it. In other words, a preponderance of the evidence means that evidence which shows a fact is more probably true than not true.” *Nauheim v. City of Topeka*, 309 Kan. 145, 152, 432 P.3d 647 (2019) (internal quotations and citations omitted).

The first question is whether Everett proved by a preponderance of the evidence at trial that he did not commit the crime of manufacture of methamphetamine. Valentine testified in detail about the materials she and Everett used to make meth, who supplied the materials, the process they used to make meth, and the location where they made meth one day between March and May 2006. Valentine testified that after they made meth, they used a portion of it. Valentine said she smoked it, while Everett injected it into his arm. This was consistent with Everett’s testimony that

while others smoked meth, he injected it. The court, observing Valentine's testimony at trial, finds her to be a credible and persuasive witness.

Everett testified that he had "been around" when meth was made, knew about particular ingredients used to make meth, he had acted as a lookout when meth was made, and had even supplied materials to others to make meth, including anhydrous ammonia. But Everett insisted at trial that he did not make meth or use meth with Valentine during the March to May 2006 time frame. He sought to bolster his claim with evidence that he had been working 40-hour weeks during March to May 2006 and testified that he usually stayed at a hotel in a town 40 miles away on Monday through Saturday while he worked. Everett also testified that he never failed a drug test during that time frame.

Everett's argument about his full-time work proving he could not have been using meth began to erode when he admitted that he had worked several previous jobs while on meth, and he "always had a job whether I was using or not." Everett's argument about passing drug tests proving he was "clean" fell apart when he admitted that he "dabbled" in using meth between March and May 2006. Then he said he used meth "once in a while" while working at North Central Air. Finally, Everett was directly asked if he used meth between March and May of 2006, and he said he "probably did." Everett's testimony severely undercut his credibility as a witness.

Given Everett's lack of credibility, his insistence that he did not manufacture methamphetamine with Valentine was not of greater weight and was not more convincing than Valentine's detailed and credible testimony to the contrary. Both sides agreed during closing arguments at trial that the success of Everett's claim boiled down to a contest of "he said, she said" between Everett and Valentine's version of events. The court believes Valentine. Everett failed to

prove by a preponderance of the evidence that he did not commit the crime or crimes for which he was convicted. Because Everett has failed to prove a necessary element of his claim, there is no need to address the other elements.

CONCLUSION

Everett has failed to establish a necessary element of proof of his claim under K.S.A. 60-5004. His claim fails. This litigation is terminated in favor of the State of Kansas. No further journal entry is necessary.

This Order is effective on the date and time shown on the electronic file stamp.

IT IS SO ORDERED.

HON. TERESA L. WATSON
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was filed electronically providing notice to counsel of record.

/s Angela Cox
Administrative Assistant